

JUDGE GRIESA

13 CIV 37

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANMAR LINES, LTD.  
Plaintiff,

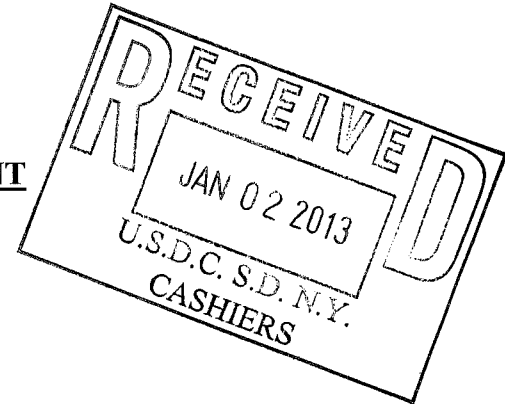
v.

MSC MEDITERRANEAN SHIPPING COMPANY  
S.A. A/K/A MSC (USA) INC., AND MSC  
MATILDE, IN REM,

Defendant.

Case No.:

**COMPLAINT**



Plaintiff DANMAR LINES, LTD. (“DANMAR” or “Plaintiff”), by and through their attorneys, as and for their Complaint against defendant MSC MEDITERRANEAN SHIPPING COMPANY S.A. A/K/A MSC (USA) INC., AND MSC MATILDE, IN REM (“MSC” or “Defendant”) alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the admiralty jurisdiction of this Court pursuant to 28 U.S.C. §1333.
2. The Court also has jurisdiction over this claim per 28 U.S.C. § 1332 in that the citizenship of the parties is diverse and, the amount in controversy exceeds \$75,000 exclusive of interest and costs.
3. The court also has pendent, ancillary and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
4. Plaintiff also brings this action for a declaratory judgment pursuant to 28 U.S.C. § 2201 *et seq.* and Rule 57 of the Federal Rules of Civil Procedure.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391. MSC's Bill of Lading mandates suit in this venue.

### **PARTIES**

6. Danmar Lines Ltd. is a corporation organized and existing pursuant to the laws of the Switzerland; DHL Global Forwarding acted as its agent with respect to the matters herein.

7. MSC is a corporation organized and existing under the laws of a foreign country with its principal place of business in a foreign country, and was and now is engaged in business as a carrier of merchandise by sea, rail and by road for hire and maintains a place of business in New York.

8. MSC was and now is in business as carrier of goods by sea with a place of business c/o Mediterranean Shipping Company (USA), Inc. 420 Fifth Avenue, New York, New York 10018. The MSC Matilde is an ocean going vessel engaged in the carriage of goods by sea.

9. Alternatively, MSC does business in the State of New York and is subject to the jurisdiction of this Court.

10. Further alternatively, MSC is subject to in personam jurisdiction in this Court pursuant to Rule 4(k)(2) of the Federal Rules of Civil Procedure.

### **FACTS**

11. Plaintiff issued Bill of Lading NYC149560 dated New York to C.L. Hawthaway & Sons Corp. for the carriage of certain cargo from Boston, Massachusetts to Bremerhaven, Germany, consigned to Leonard Kurz Stifurg & Co. ("Kurz"), ("the Shipment").

12. Plaintiff arranged for Defendant MSC to carry the Shipment from Boston, Massachusetts to Bremerhaven, Germany pursuant to an MSC Bill of Lading.

13. Kurz and its subrogated insurers allege that the Shipment was not in like good order when delivered by MSC.

14. Kurz and its subrogated insurers have made a claim against Plaintiff in the amount as best as can be ascertained of \$240,000.

#### **FIRST CAUSE OF ACTION**

15. Plaintiff repeats and realleges each and every paragraph contained herein.

16. Plaintiff asserts this claim without prejudice to or waiver of any defenses that may be available to it.

17. While denying any liability for damages to Kurz and its subrogated insurers, if the Shipment was not delivered in like good condition as alleged by Kurz and its subrogated insurers, and Plaintiff is held liable or caused to make payment for such, it resulted solely from the fault, negligence, gross negligence and/or lack of care, breach of contract and/or breach of warranty (express or implied), omission or other wrongful act on the part of the Defendant, its agents or sub-contractors.

18. As a result of the foregoing, Plaintiff claims against Defendant for any and all sums which Plaintiff may be required to pay, including attorneys' fees and expenses.

#### **SECOND CAUSE OF ACTION**

19. Plaintiff repeats and realleges each and every paragraph contained herein.

20. Plaintiff asserts this claim without prejudice to or waiver of any defenses that may be available to it.

21. While denying any liability for damages to Kurz and its subrogated insurers, if Plaintiff should be held liable to Kurz and its subrogated insurers, then Plaintiff asserts that it shall be entitled to damage from Defendant as a result of breach of contract.

**THIRD CAUSE OF ACTION**

22. Plaintiff repeats and realleges each and every paragraph contained herein.

23. Plaintiff asserts this claim without prejudice to or waiver of any defenses that may be available to it.

24. While denying any liability for damages to Kurz and its subrogated insurers, if Plaintiff should be adjudged liable to Kurz and its subrogated insurers, Plaintiff asserts that any and all injuries and damages allegedly sustained by Kurz and its subrogated insurers were the proximate result of the actions of the Defendant. As such, Defendant is liable to Plaintiff, by way indemnification and/or contribution for any and all sums which it may be required to pay in this action, including attorneys' fees and expenses.

**PRAYER**

WHEREFORE, while denying any liability for damages for the Shipment and its insurers, if Plaintiff should be held liable, Plaintiff prays the Court enter a judgment on its Complaint against Defendants MSC Mediterranean Shipping Company S.A. MSC (USA) and MSC Matilde together with an award of costs, costs of suit, interest and reasonable attorney's fees, and for such other relief as the Court deems just and proper.

**DUANE MORRIS LLP**

A Delaware Limited Liability Partnership

Dated: January 2, 2013

By: \_\_\_\_\_

James W. Carbin (JC5004)

Attorneys for Plaintiff Danmar Lines, Ltd.

and DHL Global Forwarding

One Riverfront Plaza

1037 Raymond Boulevard, Suite 1800

Newark, New Jersey 07102-5429

(973) 424-2000

[JWCarbin@duanemorris.com](mailto:JWCarbin@duanemorris.com)

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding   
 ☐ 2 Removed from State Court   
 ☐ 3 Remanded from Appellate Court   
 ☐ 4 Reinstated or Reopened   
 ☐ 5 Transferred from (Specify District)   
 ☐ 6 Multidistrict Litigation   
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented   
 ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF   
 ☐ 2 U.S. DEFENDANT   
☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)   
☐ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] [ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2 [ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Danmar Lines Ltd.  
 Europastrasse 23  
 CH-8152  
 Glattbrugg, Switzerland

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Mediterranean Shipping Company (USA), Inc. 420 Fifth Avenue, New York, New York 10018

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN  
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO

☒ YES (DATE ADMITTED Mo. 1 Yr. 1980 )

Attorney Bar Code # JC-5004

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JS 44C/SDNY  
REV. 7/2012

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

DANMAR LINES, LTD.

## DEFENDANTS

MSC MEDITERRANEAN SHIPPING COMPANY S.A. A/K/A MSC (USA)  
INC., AND MSC MATILDE

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

James W. Carlin  
Duane Morris LLP, 1037 Raymond Blvd., Suite 1800, Newark, NJ 07102

## ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Has this or a similar case been previously filed in SDNY at any time? No ☐ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☐ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## TORTS

## ACTIONS UNDER STATUTES

## CONTRACT

[ ] 110 INSURANCE  
[x] 120 MARINE  
[ ] 130 MILLER ACT  
[ ] 140 NEGOTIABLE  
INSTRUMENT  
[ ] 150 RECOVERY OF  
OVERPAYMENT &  
ENFORCEMENT  
OF JUDGMENT  
[ ] 151 MEDICARE ACT  
[ ] 152 RECOVERY OF  
DEFAULTED  
STUDENT LOANS  
(EXCL VETERANS)  
[ ] 153 RECOVERY OF  
OVERPAYMENT  
OF VETERAN'S  
BENEFITS  
[ ] 160 STOCKHOLDERS  
SUITS  
[ ] 190 OTHER  
CONTRACT  
[ ] 195 CONTRACT  
PRODUCT  
LIABILITY  
[ ] 196 FRANCHISE

## REAL PROPERTY

[ ] 210 LAND  
CONDEMNATION  
[ ] 220 FORECLOSURE  
[ ] 230 RENT LEASE &  
EJECTMENT  
[ ] 240 TORTS TO LAND  
[ ] 245 TORT PRODUCT  
LIABILITY  
[ ] 290 ALL OTHER  
REAL PROPERTY

## PERSONAL INJURY

[ ] 310 AIRPLANE  
[ ] 315 AIRPLANE PRODUCT  
LIABILITY  
[ ] 320 ASSAULT, LIBEL &  
SLANDER  
[ ] 330 FEDERAL  
EMPLOYERS'  
LIABILITY  
[ ] 340 MARINE  
[ ] 345 MARINE PRODUCT  
LIABILITY  
[ ] 350 MOTOR VEHICLE  
[ ] 355 MOTOR VEHICLE  
PRODUCT LIABILITY  
[ ] 360 OTHER PERSONAL  
INJURY

## ACTIONS UNDER STATUTES

## CIVIL RIGHTS

[ ] 441 VOTING  
[ ] 442 EMPLOYMENT  
[ ] 443 HOUSING/  
ACCOMMODATIONS  
[ ] 444 WELFARE  
[ ] 445 AMERICANS WITH  
DISABILITIES -  
EMPLOYMENT  
[ ] 446 AMERICANS WITH  
DISABILITIES -OTHER  
[ ] 440 OTHER CIVIL RIGHTS  
(Non-Prisoner)

## PERSONAL INJURY

[ ] 362 PERSONAL INJURY -  
MED MALPRACTICE  
[ ] 365 PERSONAL INJURY  
PRODUCT LIABILITY  
[ ] 368 ASBESTOS PERSONAL  
INJURY PRODUCT  
LIABILITY

## PERSONAL PROPERTY

[ ] 370 OTHER FRAUD  
[ ] 371 TRUTH IN LENDING  
[ ] 380 OTHER PERSONAL  
PROPERTY DAMAGE  
[ ] 385 PROPERTY DAMAGE  
PRODUCT LIABILITY

## PRISONER PETITIONS

[ ] 510 MOTIONS TO  
VACATE SENTENCE  
20 USC 2255  
[ ] 530 HABEAS CORPUS  
[ ] 535 DEATH PENALTY  
[ ] 540 MANDAMUS & OTHER

## PRISONER CIVIL RIGHTS

[ ] 550 CIVIL RIGHTS  
[ ] 555 PRISON CONDITION

## FORFEITURE/PENALTY

[ ] 610 AGRICULTURE  
[ ] 620 OTHER FOOD &  
DRUG  
[ ] 625 DRUG RELATED  
SEIZURE OF  
PROPERTY  
21 USC 881  
[ ] 630 LIQUOR LAWS  
[ ] 640 RR & TRUCK  
[ ] 650 AIRLINE REGS  
[ ] 660 OCCUPATIONAL  
SAFETY/HEALTH  
[ ] 690 OTHER

## LABOR

[ ] 710 FAIR LABOR  
STANDARDS ACT  
[ ] 720 LABOR/MGMT  
RELATIONS  
[ ] 730 LABOR/MGMT  
REPORTING &  
DISCLOSURE ACT  
[ ] 740 RAILWAY LABOR ACT  
[ ] 790 OTHER LABOR  
LITIGATION  
[ ] 791 EMPL RET INC  
SECURITY ACT

## IMMIGRATION

[ ] 462 NATURALIZATION  
APPLICATION  
[ ] 463 HABEAS CORPUS-  
ALIEN DETAINEE  
[ ] 465 OTHER IMMIGRATION  
ACTIONS

## BANKRUPTCY

[ ] 422 APPEAL  
28 USC 158  
[ ] 423 WITHDRAWAL  
28 USC 157

## PROPERTY RIGHTS

[ ] 820 COPYRIGHTS  
[ ] 830 PATENT  
[ ] 840 TRADEMARK

## SOCIAL SECURITY

[ ] 861 HIA (1395ff)  
[ ] 862 BLACK LUNG (923)  
[ ] 863 DIWC/DIWW (405(g))  
[ ] 864 SSID TITLE XVI  
[ ] 865 RSI (405(g))

## FEDERAL TAX SUITS

[ ] 870 TAXES (U.S. Plaintiff or  
Defendant)  
[ ] 871 IRS-THIRD PARTY  
26 USC 7609

## OTHER STATUTES

[ ] 400 STATE  
REAPPORTIONMENT  
[ ] 410 ANTITRUST  
[ ] 430 BANKS & BANKING  
[ ] 450 COMMERCE  
[ ] 460 DEPORTATION  
[ ] 470 RACKETEER INFLU-  
ENCED & CORRUPT  
ORGANIZATION ACT  
(RICO)  
[ ] 480 CONSUMER CREDIT  
[ ] 490 CABLE/SATELLITE TV  
[ ] 810 SELECTIVE SERVICE  
[ ] 850 SECURITIES/  
COMMODITIES/  
EXCHANGE  
[ ] 875 CUSTOMER  
CHALLENGE  
12 USC 3410  
[ ] 890 OTHER STATUTORY  
ACTIONS  
[ ] 891 AGRICULTURAL ACTS  
[ ] 892 ECONOMIC  
STABILIZATION ACT  
[ ] 893 ENVIRONMENTAL  
MATTERS  
[ ] 894 ENERGY  
ALLOCATION ACT  
[ ] 895 FREEDOM OF  
INFORMATION ACT  
[ ] 900 APPEAL OF FEE  
DETERMINATION  
UNDER EQUAL  
ACCESS TO JUSTICE  
[ ] 950 CONSTITUTIONALITY  
OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

13 CIV 37

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK DIVISION

Danmar Lines, Ltd.,

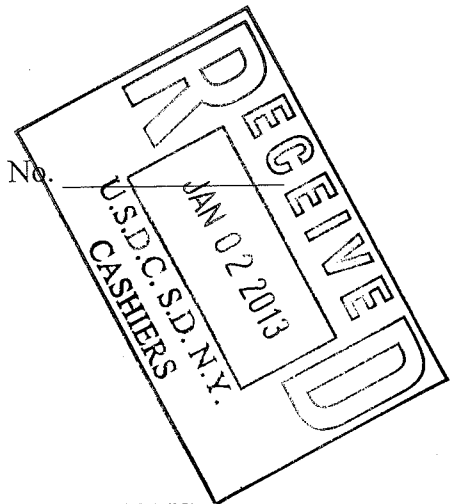
Plaintiff,

against

MSC Mediterranean Shipping Company S. A. a/k/a  
MSC (USA), Inc. and MSC Matilde, *in rem*,

Defendant.

Civil Action No.



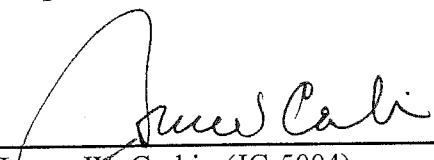
**PLAINTIFFS' CERTIFICATE OF INTEREST PERSONS**

Plaintiff Danmar Lines, Ltd., by its attorneys, DUANE MORRIS LLP, pursuant to Federal Rule of Civil Procedure 7.1 states that the following are corporate parents, affiliates and/or subsidiaries of said party which are publicly held and/or owns 10% or more of the said party's stock: **Deutsche Post AG.**

Dated: January 2, 2013

Respectfully submitted,

By: \_\_\_\_\_

  
James W. Carbin (JC-5004)  
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and DHL Global Forwarding  
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